

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2011 - 137
)	
Precision Fire Solutions, LLC)	
)	
)	
Dept. of Disabilities & Special Needs)	POSTING DATE: October 24, 2011
IFB No. 5400003352)	
Inspection of Fire Alarm Equipment)	MAILING DATE: October 24, 2011
<u>At Coastal Center</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Precision Fire Solutions, LLC (Precision), which was filed on September 8, 2011. With this invitation for bids (IFB), the Department of Disabilities and Special Needs (DDSN) attempts to procure inspection services of fire alarm equipment for its Coastal Center complex. In its letter, Precision protested DDSN's statement of award to TriTek Fire and Security, LLC. (TriTek) Specifically, Precision challenged TriTek's responsiveness to a requirement of the IFB that bidders submit "[a] sample of documentation."

Based on the official procurement file and the applicable law, the CPO has conducted an administrative review without a hearing.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On August 12, 2011, DDSN published the solicitation. [Ex. 1]

2. On August 30, 2011, DDSN opened the bids received.
4. On September 6, 2011, DDSN issued a statement of award to TriTek for a total potential value of \$17,800. [Ex. 2]
5. On September 8, 2011, Precision submitted its protest to the CPO.

CONCLUSIONS OF LAW

The South Carolina Consolidated Procurement Code (Code) grants actual bidders the right to protest awards made by the State. Section 11-35-4210(1)(b) of the Code reads in relevant part,

Any actual bidder... who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code...

However, Section 11-35-4210(1)(d) limits this right by stating, "The rights and remedies granted by...Section 11-35-4410(1)(b) are *not available* for contracts with an *actual or potential value of up to fifty thousand dollars.*" (Emphasis added.)

In this matter, the IFB offered bidders a contract "from date of award for one year with four (4) one year options to extend." (Ex. 1, p.25) Bidders were asked to offer an annual price for the "Total Cost for inspection of all systems listed." (Ex. 1, p. 25) TriTek offered an annual price of \$3,560.00. (Ex. 3, p. 25) On September 6, 2011, DDSN issued its statement of award effective immediately to TriTek for \$3,560 for the initial contract period of September 7, 2011 through September 6, 2012 and a total potential price of \$17,800.00 for the entire potential period of September 7, 2011 through September 6, 2016. (Ex. 2)

DETERMINATION

Since the total potential award of \$17,800.00 is less than \$50,000, the CPO has no authority to hear this matter. Therefore, the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

October 24, 2011

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2011)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the General Appropriations Act for Fiscal Year 2011-2012, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, an incorporated business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



Precision Fire Solutions, LLC

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September 7, 2011

Voight Shealy
Chief Procurement Officer
1201 Main Street, Suite 600
Columbia, SC 29201

Ref: Solicitation# 5400003352 "Inspection of Fire Alarm Equipment at Coastal Center, 9995 Miles-Jamison Road, Summerville, SC 29485"

Mr. Shealy,

We are protesting the award of this solicitation on the grounds that the bid from TriTek Fire and Security, LLC should have been deemed nonresponsive. On page 9 under Responsiveness / Improper Offers section c (copy included) "Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive." TriTek Fire and Security, LLC did not provide all of the material requested in their bid.

On page 3 of the solicitation under section D (copy included), it is stated that "A sample of documentation shall be submitted with bid." TriTek Fire and Security, LLC failed to supply a sample of their documentation with their bid package. This was pointed out during the opening of the bids and should have been recorded as such.

This may have been an oversight, but the solicitation included a checklist on page 27 (copy included) that emphasizes "Check to ensure your Bid/proposal includes everything requested!"

It is our opinion that we were the only company that provided a responsive bid and therefore should be awarded the contract. We welcome the opportunity to sit down with you to discuss this further.

Sincerely,

Butch McGee
Service Manager

I. SCOPE OF SOLICITATION

ACQUIRE SERVICES (JAN 2006)

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

SPECIFICATIONS FOR ANNUAL FIRE ALARM INSPECTION CONTRACT

A. General Scope of Work

1. Perform annual inspection(s) with report of needed repairs. Owner will have work done under separate purchase order(s) (see paragraph G).
2. List of building(s) and system(s) information attached.
3. Clean equipment.

B. Contractor's Qualifications

1. Be qualified to do fire alarm work as required by S. C. License Board.
2. Main office of operation to be within 75 miles of owner's site(s).
3. Technicians performing services to be certified by NICET (National Institute for Certification in Engineering Technologies) to minimum level (2).
4. To have been in commercial fire alarm installation and service for a minimum of (4) years.
5. Capable of providing U.L. Certification for a fire alarm system.

C. Meet Requirements of Following

1. Manufacturer of equipment.
2. South Carolina DHEC.
3. South Carolina Fire Codes.
4. NFPA 72.
5. NEC.

D. Documentation

1. Complete written report of inspection(s) and list of needed repairs to be left with designated person at completion of job. Report to include exact locations of all devices with test results, recommendations on repairs, and signed by technician performing service. A sample of documentation shall be submitted with bid.

E. Annual Inspection (Check Following as Applicable)

1. Smoke (and duct) detectors with can smoke (no magnets).
2. Sensitivity of smoke (and duct) detectors (print out from FAC and/or U.L. smoke generator at each individual head.)
3. Heat detectors with heat gun.
4. Pull stations.
5. Homs and strobes.
6. HVAC shut-down (activate pull station).
7. Sprinkler flow switch (activate contacts).
8. Sprinkler air compressor (drop pressure).
9. Sprinkler tamper switches on riser and PIV (activate contacts).

OMIT TAXES FROM PRICE (JAN 2004)

Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]

PROTESTS (JUNE 2006)

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]

PUBLIC OPENING (JAN 2004)

Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

QUESTIONS FROM OFFERORS (JAN 2004)

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [02-2A095-1]

REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

RESPONSIVENESS/IMPROPER OFFERS (JAN 2004)

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost

OFFEROR'S CHECKLIST (JUN 2007)

OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms!
- Unless expressly required, do not include any additional boilerplate contract clauses.
- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**
- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.

[09-9010-1]